

**U.S. Department of Agriculture
Food and Nutrition Service
Administrative and Judicial Review Branch**

**5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of
Yaba’s Quick Mart, Inc.,**

Appellant,

v.

Retailer Operations Division,

Respondent.

Case Number: C0234402

FINAL AGENCY DECISION

It is the decision of the U.S. Department of Agriculture (USDA), Food and Nutrition Service (FNS) that a Transfer of Ownership Civil Money Penalty (TOCMP) in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** was properly imposed by FNS’s Retailer Operations Division against **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, owner of Yaba’s Quick Mart, Inc. (hereinafter “Appellant”), for selling or transferring ownership of a store that was permanently disqualified from the Supplemental Nutrition Assistance Program (SNAP).

ISSUE

The issue accepted for review is whether the Retailer Operations Division took appropriate action, consistent with 7 CFR § 278.6(f)(2) and 7 CFR § 278.6(g) in its administration of SNAP when it assessed a TOCMP in the amount of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** against the Appellant.

AUTHORITY

7 U.S.C. § 2023 and its implementing regulations at 7 CFR § 279.1 provide that “[A] food retailer or wholesale food concern aggrieved by administrative action under § 278.1, § 278.6 or § 278.7 . . . may file a written request for review of the administrative action with FNS.”

CASE CHRONOLOGY

The case record indicates that in a letter dated October 11, 2018, FNS’s Retailer Operations Division charged Yaba’s Quick Mart, Inc., under the ownership of **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, with three counts of trafficking in SNAP benefits – a program violation subject to permanent disqualification from SNAP. The record further shows that a determination letter was sent by FNS to the firm on December 13, 2018. Upon receipt of the determination letter, Yaba’s Quick Mart, Inc. was permanently disqualified from SNAP effective December 17, 2018. The

case record indicates that the firm did not file a request for an administrative review of the agency's decision. Accordingly, FNS closed its case effective February 27, 2019.

Both the charge and determination letters stated that in the event that ownership of the store was sold or transferred after the firm's disqualification, it would be subject to and liable for a TOCMP as provided by SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4). The letters also noted that the amount of the TOCMP would be calculated based on regulations at § 278.6(g).

Documentation in the case record shows that on March 10, 2020, a SNAP application was submitted to FNS for a new store at the same location where Yaba's Quick Mart, Inc. had previously operated. According to the application, this new store, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), began its business operations on January 17, 2020. 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was authorized for SNAP participation effective July 17, 2020.

Upon discovering that a new application had been submitted at a location where SNAP violations had previously occurred, the Retailer Operations Division requested additional documentation from the new store owner to verify that the disqualified owner was not affiliated with the new store in any way and to ascertain whether the transfer of ownership from 5 U.S.C. § 552 (b)(6) & (b)(7)(C) to 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was bona fide. In response to this request, the new store owner submitted a number of documents, including a Bill of Sale dated January 14, 2020, which was signed by both 5 U.S.C. § 552 (b)(6) & (b)(7)(C) and 5 U.S.C. § 552 (b)(6) & (b)(7)(C). The new owner also submitted a copy of an agreement which stated that payments for the sale of the business would commence once the new store was authorized to accept SNAP benefits (known as the Link card in Illinois).

In a letter dated September 9, 2020, the Retailer Operations Division informed the Appellant that because its store was sold or transferred during its disqualification period, a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was being assessed against the owner of Yaba's Quick Mart, Inc. in accordance with SNAP regulations at 7 CFR § 278.6(f)(2), (3) and (4), and § 278.6(g).

In a letter postmarked September 17, 2020, the Appellant, through counsel, appealed the assessment of a TOCMP by requesting an administrative review. The request was granted and the case was assigned to an administrative review officer. Implementation of the TOCMP has been held in abeyance pending completion of this review.

Also on September 17, 2020, Appellant's counsel submitted a request for case file information in a request made under the Freedom of Information Act (FOIA). In accordance with agency policy in effect at the time of the Appellant's FOIA request, the administrative review was held in abeyance until a response to the FOIA request was completed.

On May 11, 2022, FNS completed the FOIA response and sent a written reply to Appellant's counsel. The response included a five-page letter and 54 pages of responsive documents.

On July 12, 2022, the case was reassigned to administrative review officer Jon Yorgason.

On September 2, 2022, the administrative review officer sent Appellant's counsel an e-mail which indicated that after its receipt of the agency's FOIA response in May 2022, the Appellant had yet to offer any additional contentions or documentation related to its request for an administrative review. The review officer gave Appellant's counsel 10 days to provide such information, after which the administrative review would commence.

As of the date of this decision, no further information has been submitted by the Appellant or its counsel.

STANDARD OF REVIEW

In an appeal of adverse action, such as the imposition of a civil money penalty, an Appellant bears the burden of proving by a preponderance of the evidence that the administrative action should be reversed. This means that an Appellant has the burden of providing relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

CONTROLLING LAW AND REGULATIONS

The controlling law in this matter is found in the Food & Nutrition Act of 2008, as amended (7 U.S.C. § 2021), and promulgated through regulation under Title 7 CFR Part 278. In particular, 7 CFR § 278.6(f)(2) and (g) establish the authority upon which a TOCMP may be imposed against a retail food store or wholesale food concern.

7 U.S.C. § 2021(e)(1) states:

In the event any retail food store or wholesale food concern that has been disqualified under subsection (a) of this section is sold or the ownership thereof is otherwise transferred to a purchaser or transferee, the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern shall be subjected to a civil penalty in an amount established by the Secretary through regulations to reflect that portion of the disqualification period that has not yet expired. If the retail food store or wholesale food concern has been disqualified permanently, the civil penalty shall be double the penalty for a ten-year disqualification period, as calculated under regulations issued by the Secretary. The disqualification period imposed under subsection (b) shall continue in effect as to the person or persons who sell or otherwise transfer ownership of the retail food store or wholesale food concern notwithstanding the imposition of a civil penalty under this subsection.

7 CFR § 278.6(f)(2) reads, in part:

In the event any retail food store or wholesale food concern which has been disqualified is sold or the ownership thereof is

otherwise transferred...the person or other legal entity who sells or otherwise transfers ownership...shall be subjected to and liable for a civil money penalty in an amount to reflect that portion of the disqualification period that has not expired, to be calculated using the method found at § 278.6(g). If the retail food store...has been permanently disqualified, the civil money penalty shall be double the penalty for a ten year disqualification period...

7 CFR § 278.6(g) outlines the steps for calculating the TOCMP amount, in relevant part:

- 1) Determine the firm's average monthly redemptions...for the 12-month period ending with the month immediately preceding that month during which the firm was charged with violations.
- 2) Multiply the average monthly redemption figure by 10 percent.
- 3) Multiply the product arrived at in paragraph (g) (2) by the number of months for which the firm would have been disqualified....The civil money penalty may not exceed an amount specified in § 3.91(b) (3) (i) for each violation.

5 U.S.C. § 552 (b)(7)(E). It is also important to note that in Step 3 of § 278.6(g), above, 240 is the number of months used to calculate the civil money penalty for permanent disqualifications. This is in accordance with 7 U.S.C. § 2021(e)(1) and SNAP regulations at 7 CFR § 278.6(f)(2).

APPELLANT'S CONTENTIONS

The Appellant, through counsel, has made limited contentions in this case. The lone discernible contention is an insinuation that the amount assessed is inaccurate.

ANALYSIS AND FINDINGS

The primary issue for review is whether it was lawful for the Retailer Operations Division to impose a **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** transfer of ownership civil money penalty against the Appellant. To this regard, statute at 7 U.S.C. § 2021 and SNAP regulations at 7 CFR § 278.6(f)(2) are clear that a TOCMP shall be assessed if a store which has been disqualified is subsequently sold or the ownership of the firm is transferred prior to the end of its disqualification period.

This review has no authority to dismiss or modify a TOCMP for any reason except in the following circumstances:

- Evidence shows that a sale or transfer of ownership did not occur; or
- The monetary penalty was assessed in a manner not in accordance with regulation; or
- There was an error in calculating the TOCMP amount.

Based on an analysis of the evidence in this case, it is the finding of this review that a sale or transfer of ownership between the Appellant, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, and buyer **5 U.S.C. § 552 (b)(6) & (b)(7)(C)**, did occur. The record clearly shows that effective January 14, 2020, **5 U.S.C. § 552 (b)(6) & (b)(7)(C)** agreed to purchase all inventory and all fixtures of the

convenience store located at 5 U.S.C. § 552 (b)(6) & (b)(7)(C) from 5 U.S.C. § 552 (b)(6) & (b)(7)(C), who had been previously disqualified from SNAP at that same location. The record further shows that 5 U.S.C. § 552 (b)(6) & (b)(7)(C) reopened the same convenience store under a new name, 5 U.S.C. § 552 (b)(6) & (b)(7)(C), and was later authorized by FNS to accept SNAP benefits. Such a transaction constitutes a sale or transfer of ownership within the meaning of SNAP regulations.

Because the sale of the store occurred during the Appellant's disqualification period, a TOCMP is warranted.

TOCMP Calculation

Regulations at 7 CFR § 278.6(g) outline the steps for calculating the TOCMP. The TOCMP amount is derived from the firm's SNAP redemption volume during the 12 months immediately prior to being charged with the violations that led to the store's disqualification.¹ Modifications to a TOCMP amount may occur only when there is an error in calculation or when the TOCMP amount exceeds the statutory limit. This review has no authority to modify a TOCMP amount for any other reason. The calculation of the TOCMP is as follows:

5 U.S.C. § 552 (b)(6) & (b)(7)(C)

In this case, the calculated TOCMP of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) exceeds the agency sanction limit, which is 5 U.S.C. § 552 (b)(7)(E) per violation. The October 11, 2018 charge letter identified three violations of trafficking. Therefore, the TOCMP was assessed on the basis of three violations at a maximum amount of 5 U.S.C. § 552 (b)(7)(E) each. Based on regulations cited at 7 CFR § 278.6(g), it is the determination of this review that a TOCMP in the amount of 5 U.S.C. § 552 (b)(6) & (b)(7)(C) was properly assessed in this matter.

CONCLUSION

The permanent disqualification of Yaba's Quick Mart, Inc. took effect on December 17, 2018. Based on a preponderance of the evidence, this review finds that the store was sold or ownership was transferred to a new owner effective January 14, 2020. Therefore, 7 CFR § 278.6(f)(2) of the SNAP regulations is applicable, and the assessment of a TOCMP is required. A review of the calculation indicates that the amount of the TOCMP as assessed by the Retailer Operations Division is proper as noted in the analysis above. Thus, the decision to impose a 5 U.S.C. § 552 (b)(6) & (b)(7)(C) civil money penalty against 5 U.S.C. § 552 (b)(6) & (b)(7)(C), owner of Yaba's Quick Mart, Inc., is sustained.

To arrange payment, the Appellant must contact FNS's Financial Management Accounting Division at (703) 605-0483 within 30 days of receipt of this decision.

¹ The trafficking charge letter was sent to Yaba's Quick Mart, Inc. less than six months after it was initially authorized for SNAP (on April 24, 2018). As such, the only months factored into the TOCMP calculation are those months in which the firm was authorized to accept SNAP benefits (April 2018-September 2018).

RIGHTS AND REMEDIES

Applicable rights to a judicial review of this decision are set forth in Section 14 of the Food and Nutrition Act of 2008 (7 U.S.C. § 2023) and in Section 279.7 of the SNAP regulations. If a judicial review is desired, the complaint, naming the United States as the defendant, must be filed in the U.S. District Court for the district in which the Appellant owner resides or is engaged in business, or in any court of record of the State having competent jurisdiction. If a complaint is filed, it must be filed within 30 days of receipt of this decision. The judicial filing timeframe is mandated by the Act, and this office cannot grant an extension.

Under the Freedom of Information Act, we are releasing this information in a redacted format as appropriate. FNS will protect, to the extent provided by law, personal information that could constitute an unwarranted invasion of privacy.

JON YORGASON
Administrative Review Officer

September 16, 2022